I have come to Parliament at the earliest opportunity to inform what has been done by the Ministry of External Affairs for the simple reason that a highly placed diplomat has been involved in this.

Who else is involved? Who are the Indians? Naturally, there have to be Indians. I have already said that two Indians were there on the spot. But those two Indians could not have got hold of this document without others being in the chain. It could be a network. But all this will come out in the investigation, and that information it is just not possible to have now, at this moment.

I would also like to point out, I could have reeled off the names of the Indians also. I know that the names of the Indians are going to come out tomorrow. Anyone who looks into the FIR will know that. But the point is, between my mentioning the names and someone coming to know the names, even if a few hours intervene, that would be good because within those few hours certain evidence may be obliterated. So, we have to be very careful and avoid to come out with the names as long as possible so that the investigation is facilitated. This is all the intention, Sir. There was no question of my hiding the names or being eager to hide the names. I know the names cannot be hidden beyond a point. So, this is the position in which we find ourselves today.

If a debate is wanted, by all means we can have it. If more information is needed, my other colleagues who are in charge of the investigating agencies, will come up with the necessary information and place it before the House. What I have done is what I must do today and what I must not fail to do today because a foreign diplomat has been involved. Two foreign nationals have been involved, of whom one is a foreign diplomat. Therefore, this is a matter of urgency, and I have come to the House. This is what I can say at the moment, Sir. More will come, I am sure. This is not the end of the story. I am sure, when more information is available in some form or other, it will come before the House.

COMMISSIONS OF INQUIRY (AMENDMENT) BILL, 1988—Contd.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The House will now continue discussion on Commissions of Inquiry (Amendment) Bill, 1988. Shri Aladi Aruna.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM (Tamil Nadu): Though it is a piece of legislation, it is a spearhead legislation against fair criticism and the freedom of the press.

As far as the amendment to Section 5B is concerned, we extend our support without any reservation. Appointment of assessor is quite necessary to collect materials and particulars so as to unearth the facts.

As far as amendment to Section 10A is concerned, it is unwarranted, unnecessary and even obnoxious. Commission of inquiry is not a judicial body; it is not a court of law. It is merely a fact-finding agency. It is doing some exercise in unearthing the facts. It is true and I admit that on certain occasions press and platforms exceed the limit in giving its opinion or criticising the functions of the commission of inquiry. It might have caused agony in the mind of the commissioners of inquiry, but we must keep in mind that the commission of inquiry is ordered only on public matters over which press has a legitimate right to criticise and to give its comments. So, we cannot bring in a piece of legislation to muzzle the rights of press. If its right is curtailed this commission of inquiry will become a rubber stamp of party in power. Most of the orders of Commissions of Inquiry have become a farce. There is no follow-up action. Let the Minister explain to this House how many persons have been prosecuted or taken action on the basis of the findings of the inquiry. There is no follow-up action at all. That is why it is almost a mockery in democracy. That is why we are facing flood of criticisms in the press and in different platforms.

The reason for the introduction of the new procedure to protect the dignity and respect of the members of the inquiry

[Shri Aladi Aruna *alias* V. Arunachalam]

commission is quite unconvincing because the members of the commission may be qualified judges or may be professional judges, but they are not judges in function as far as the commission is concerned. Therefore there is no need of adopting any special procedure to protect the dignity or interest of the members of the commission.

If the Bill is passed, I may remind the House, the rights of the Press would be muzzled. There will be any fair criticism which is very necessary. The institution of the inquiry has not materialised so far. It is mostly politically motivated. It is mostly based on partisan ends. Therefore, there is no wrong on the part of the press to express its opinion. But the purpose of this amendment is to curtail the rights of the press. That is why I am saying that it will hurt the rights of the press.

Then the opportunity of finding the facts would be narrowed if there is this type of legislation. The objective is to find the facts. If you curtail the rights of the press, then automatically the inquiry commission will be a tool of the Government. Therefore, the very object will be defeated by this piece of legislation.

There is no doubt that it is a bulwark to protect the dignity, respect and interest of the commissioners of inquiry commissions. Assuming that it is imperative. I would like to ask the hon. hon. Minister, how he is going to prevent the Commissioner from abusing his position. We know that in many Commissions the position of the Commissioner is totally abused for partisan ends. How, he is going to prevent this through this legislation? Therefore, fair criticism from the press is quite essential. So by introducing this amendment, our hon. Minister is wittingly or unwittingly putting an end to the freedom of the press That is why, I oppose this amendment.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Mr. Kamalendu Bhattachariee. Not here. Mr. N.E. Balaram.

SHRI N. E. BALARAM (Kerala): Mr. Vice-Chairman, I am of the opinion that the Government should be more careful in bringing forward legislations of this type. They should bring forward a legislation only when the need is urgent and there is sufficient need for it. If there is no sufficint need for legislation, they should not resort to bringing forward legislation. I think, this piece of legislation is not at all needed. I was listening to the arguments advanced by the people who are well-versed in law because I am not a student of law and I must confess it. Even then I am not convinced about the necessity of this piece of legislation. I think the purpose of this legislation is to give an extraordinary and over-simplified procedure for a handful of individuals, I respect for a handful of individuals, because they found it inconvenient to accept certain procedures in courts and they are justified by the people who know the law here. I am sorry, I am not of that opinion, I am not in favour of appointing either High Court Judges or Supreme Court Judges on the Commissions of Inquiry. I am not in favour of that especially in matters where Governments are involved. So in future we should be very careful about that. I also feel that this sort of Commissions of Inquiry are only fact-finding ones. I do not think there are two opinions about that. They are not judicial ones. They are not doing judicial job. I would like to ask the Minister : Why do you want to go out of the way to give some privileges to a few individuals belonging to the court of law? That is the point which I did not understand. I was listening to all the arguments but I did not understand the need for simplifying the procedure for certain individuals.

Now, if I look at the background, I see two things to which I want to draw the attention of the Minister. One is about enquiry of the Commission, there are serious doubts and criticisms nowadays in the press and not only in the press but even in the Parliament there were criticisms. This is on aspect of it.

The second aspect is that, now, I see a dangerous trend developing especially on the part of the people who are in the establishment side. Whenever some criticism comes, whenever some allegations come, any allegation or any criticism, these are not all encouraged by the Government. These are

all labelled as scandals. Any criticism is considered as a sort of scandal. I do not know why this theory is developing nowadays. (*Interruption*)

THE MINISTER OF STATE IN THE MINISTRY OF COMMERCE (SHRI P. R. DAS MUNSHI): There is a difference between criticism and scandal.

SHRI N. E. BALARAM: I agree with you that sometimes criticism exceeds, the limit. But mainly, it is criticism and there is a sort of fear about the criticism, especially on the part of the people who are managing the establishments. That is why, these sorts of Bills are coming. I do not know what is the background behind this because two judges, who were appointed as Members of the Commission, were Supreme Court judges. Rightly or wrongly, they were criticised in the press. (*Interruptions*).... If they are all afraid of criticism, what is the meaning of our talking about democracy? Democracy means the right of criticism. It is there. Without criticism, without toleration, you cannot have democracy. Sometimes criticism exceeds. It will go to the extent of scandal, I agree with you. But even then, it is criticism. I do not know what is behind all these things. That is what I am saying. These two things, general criticism against the Commission of Inquiry, allegations against the Commission of Inquiry and the people who are more closely associated with the establishment, they are getting more and more afraid of criticism. In this background, of course, this sort of a law will come. Much more will come, I have no doubt about it. Many more things are going to come of this nature and unfortunately, Mr. Kulkarni has to support it.

SHRI A. G. KULKARNI: I am a Congress party man. I will always support.

SHRI N. E. BALARAM: That is what I am saying.

SHRI A. G. KULKARNI: Are you going to oppose your Community Party manifesto? (*Interruption*). Then why are you bringing me? (*Interruption*)...

SHRI N. E. BALARAM: But my main point is, why do you go out of the way to give privilege to a handful of persons in statutory moves? You are passing a law here.

SHRI A. G. KULKARNI: Why don't you plead with the Government?

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Mr. N. E. Balaram, please address the Chair. You are provoking him.

SHRI N. E. BALARAM: No, I am not provoking him. He was looking at me. Otherwise, I would not have asked any questions. He was looking at my face.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): He is attentive to you.

SHRI N. E. BALARAM: I am totally in disagreement with you.

SHRI A. G. KULKARNI: You should have been ready actually to have inquiry against Jyoti Basu. You are not saying that. You have no guts to say that. I can say that. This is Congress.

SHRI N. E. BALARAM: I know what you are doing. (*Interruptions*). It is not Mr. Chidambaram alone that I am talking about. I am talking about you, Mr. P. R. Das Munshi, also.

SHRI P. R. DAS MUNSHI: We are fearless but not careless.

SHRI N. E. BALARAM: No, no. You are not careless but you are afraid of so many things. That is why you are supporting the people who are having this sort of problems. You are helping them. How these people like the Supreme Court judges... (*Interruption*).

SHRI A. G. KULKARNI: Sir, I want to know one thing. Mr. P. R. Das Munshi, have they instituted any commission against their number 2? (*Interruption*)..

SHRI P. R. DAS MUNSHI: They will never do it.

SHRI A. G. KULKARNI: That is right.

SHRI N. E. BALARAM: I think, now you are satisfied, Mr. Kulkarni.... (*Interruptions*)...

Mr. Munshi, don't talk about it. I know about your position. I know your condition there. Why do you talk about these things? I know your conditions. (*Interruptions*).

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Mr. Balaram,.. (*Interruptions*).

SHRI A. G. KULKARNI: If Bhupesh Gupta was there, he would have attacked them. But Mr. Balaram has no guts. (*Interruptions*).

SHRI N. E. BALARAM: I am not like you. You are in this side, then that side and then again this side. (*Interruptions*).

PROF. C. LAKSHMANNA (Andhra Pradesh): Mr. Vice-Chairman, Sir, I am on a point of order. (*Interruptions*).

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Mr. Balaram, you please sit down. Your time is four minutes. You have taken fifteen minutes... (*Interruptions*)... unnecessarily provoking everybody.

SHRI N. E. BALARAM: I will not take any more time. I am finishing. What I say is, this piece of legislation giving protection to a handful in this country is a shameful thing according to me. Before law, the Supreme Court Judge and N. E. Balaram are not different. There should not be any difference. I oppose this Bill.

PROF. SOURENDRA BHATTACHARJEE (West Bengal): Mr. Vice-Chairman,... (*Interruptions*)... from the Treasury Benches one point has been raised today again and again that whatever is sought to be done by the Government is opposed by the Opposition. The Opposition, as the very name indicates, has a responsibility to oppose whenever the Government indulges in bad acts. And unfortunately for the country, the Government of the country has been indulging in so many bad acts of late. Its intention is always suspected. Otherwise, on the face of it, the proposed Amendment Bill would have been passed without any opposition from any side. But because of this suspicion created over a long period out of the strange way of the functioning of the Government, the Opposition to the Government's move is rather pertinent. It is not just a coincidence that the question of Fairfax Commission came up again and again in the course of today's discussion. That Commission has been something of which nobody can be proud, not to speak of anyone of the judiciary. Tailor-made findings were given by the Commission comprising two Judges of the Supreme Court. We hold the Supreme Court and its Judges in high esteem. Even though it is their responsibility to protect the establishment here we expect some objectivity of them. But if they act totally subjectively, it cannot be encouraged by the Opposition. The Government naturally would encourage it. Here there is one provision for allowances. I have nothing to say on that. It is a question of some allowances and other things for them. By all means give them those facilities. But I fail to understand why so many provisions have to be there in this amendment Bill regarding complaints under Section 10(1) of the Commissions of Inquiry Act. If the responsibility is to be given to the High Court, it should be suitably accommodated where the functions of the High Court are enumerated, not in the Commissions of Inquiry Act. High Court is not a commission of inquiry nor is the Supreme Court a commission of inquiry. Therefore why should the provisions of 10(2), (3), (4), (5), etc. be here? That is a position—I am not a lawyer as the honourable Member, Mr. Balaram—which the Minister of State for Home Affairs will kindly enlighten us, why, except the filing of a complaint by a commission of inquiry, the Commission of Inquiry Act should enumerate the functions of the High Court. Should this Act enumerate the functions of the High Court? Is it proper and necessary?

If the idea is to call defamation to question, then a Defamation Bill should be brought. Here a handpicked commission is sought to be safeguarded by an anti-defamation clause in the Commissions of Inquiry Act. As has been clearly pointed out, this is Defamation Act by backdoor methods and this should be very contemptuously dealt with and opposed by the Opposition and if the Treasury Benches have their conscience, they should also oppose this Bill. Thank you.

श्री सत्य प्रकाश मालवीय : उपसभाध्यक्ष महोदय, सेक्शन 5–बी जो बढ़ाया जा रहा है और सेक्शन 12 के सम्बंध में तो इसका समर्थन करता हूं, लेकिन सेक्शन 10–ए के बाद जो प्रोविजो बढ़ाया गया है उसका विरोध करता हूं।

इसमें खास आर्गुमेंट यह किया गया है कि जो कमीशंस आफ इंक्वायरीज के सदस्य हैं उन पर चूंकि सुप्रीम कोर्ट के जजेज की नियुक्ति होती है, हाईकोर्ट के जजेज की नियुक्ति होती है या अवकाश प्राप्त जजेज की नियुक्ति होती है या कभी-कभी डिस्ट्रिक्ट जजेज की भी नियुक्ति कमीशंस आफ इंक्वायरी एक्ट के तहत हुई है, लेकिन उनको एक्जीक्यूटिव के पास न जाना पड़े इसलिए यह एमेंडमेंट लाया गया है। मैं इस सिलसिले में कमीशंस आफ इंक्वायरी एक्ट की धारा 12(2) की ओर ध्यान आकर्षित करना चाहूंगा जिसमें यह है कि जो कमीशन की सिटिंग होगी वह प्राइवेट में हो सकती है और पब्लिक में भी हो सकती है। लेकिन अगर केन्द्र सरकार जो एक्जीक्यूटिव है, अगर वह कमीशन को हुक्म देगी कि खबरदार कमरे के अंदर तुम कार्यवाही करो तो सुप्रीम कोर्ट के जज को केन्द्र सरकार के उस हुक्म को मानना पड़ेगा। मैं उस प्रोविजो को पढ़ना चाहता हूं—

Section 12(2) of the Commissions of Inquiry Act, 1952:

"A commission may sit in public or in private as it thinks fit, provided that the commission shall sit in private on a request being made by the Central Government in that behalf."

तो मेरी आपत्ति यह है कि अगर केन्द्र सरकार कमीशंस बिठाएगी तो कमीशंस के पास कोई विवेक या डिस्क्रिशन नहीं रहेगा और कमीशन को प्राइवेट सिटिंग करनी पड़ेगी। दूसरे, इसमें स्टेटमेंट आफ आब्जेक्शंस एण्ड रीजंस में लोक सभा की कमेटी आन सब आर्डिनेट लेजिस्लेशन की चर्चा की गयी है। तो मैं एक बात तो यह बताना चाहता हूं कि जो कमेटी की रिकमैंडेशन्स हैं उनको लागू करने में कितना क्रिमिनल डिले हुआ है, इस ओर ध्यान आकर्षित करना चाहता हूं क्योंकि स्टेटमेंट आफ आब्जेक्शंस एण्ड रीजन्स के रूल का भी जिक्र है और कमेटी आफ सबआर्डिनेट रिलेशन्स, जो लोक सभा की है, उसकी रिकमेन्डेशन्स की भी चर्चा है। एक तो मान्यवर कमीशन आफ इन्क्वायरी एक्ट 1952 में बना और उसके सैक्शन 12(2) में इस बात का प्रावधान था कि उसके कार्यान्वयन के लिए नियम भी बनेंगे और रूल्ज भी बनेंगे लेकिन 20 साल तक मान्यवर, कोई नियम नहीं बना। नियम बना कब? पहली बार 1972 में और उसको कहा गया कमीशन्स आफ इक्वायरी रूल्ज, 1972 और जिसकी चर्चा स्टेटमैंट आफ आब्जैक्शन्स एण्ड रीजन्स में है और उसमें असैसर के लिए कहा गया है कि :

"Assessor means an Assessor appointed under these rules."

इनकी नाइन्थ रिपोर्ट थी मान्यवर लोकसभा की जो 11 मई, 1978 को सरकार के पास पेश की गई उसमें उन सारी बातों की चर्चा की गई थी जिसके सिलसिले में संशोधन हो रहा है—असैसर के बारे में और उनको टी० ए०, डी० ए० देने के बारे में। 1978 में उन्होंने अपनी संस्तुति किया, सरकार के पास पहुंच गया लेकिन 1983 तक उस पर कोई कार्यवाही नहीं हुई। दोबारा जब लोक सभा में उस कमेटी ने अपनी 19वीं रिपोर्ट में प्रस्तुत किया, उसमें मान्यवर, मैं आपकी अनुमति से बोलना चाहता हूं कि कमेटी जो लोकसभा की है, पार्लियामैंट की है, उसकी संस्तुति की कितनी उपेक्षा यह सरकार कर रही है यह इस बात से स्पष्ट है :

[श्री सत्य प्रकाश मालवीय]

"The Committee notes that the Ministry of Home Affairs proposed to undertake amendment of the Commissions of Inquiry Act, 1952, for making specific provisions for the appointment of assessors and for payment of travelling allowance and DA to the witnesses and assessors. The Committee desired the Ministry to take necessary action for amending the Commissions of Inquiry Act, at an early date because the payment of TA and DA and other expenses without specific authorisation means that this is apparently witout due legal authority."

"The Committee understood with concern that even after four years, the recommendations of the year 1978 remain to be implemented. The Committee fails to understand as to how the payment of TA and DA to the witnesses and assessors has been made since May 1978 without the authority of law."

यानि मामूली सा संशोधन, दो बार लोक सभा की समिति ने उसका सुझाव दिया, संस्तुति दिया, उसको नहीं माना गया लेकिन कमीशन आफ इन्क्वायरी एक्ट के सिलसिले में क्योंकि ठक्कर-नटराजन में उन्होंने इसकी चर्चा की थी, अपनी रिपोर्ट के पृष्ठ 72 में, जिसपर सितम्बर, 1987 में इस सदन में चर्चा हो चुकी है, क्या उनका आब्जरवेशन था—

"The Commission is constrained to place on record with pain and distress that the sitting Judges of the Supreme Court constituting the present Commission have been subjected to wanton and deliberate character assassination by a section of the media."

और इसमें उन्होंने सजेस्ट किया कान्टेम्पट आफ कोर्टस में संशोधन किया जा चाहिए। इस बात का यहां पर विचार प्रकट किया गया है कि सुप्रीम कोर्ट के जज की हैसियत से कमीशन का मैम्बर नहीं होता है, कमीशन का मैम्बर कोई भी व्यक्ति हो सकता है, कोई डाक्टर हो सकता है, कोई इंजीनियर हो सकता है, कोई प्रोफेसर हो सकता है। दूसरे, मैं उस दिन जो ध्यान आकर्षित कर रहा था असैसर के सिलसिले में कि कमीशन को यह भी अधिकार नहीं है कि असैसर की नियुक्ति कर सके। इसकी नियुक्ति करने के लिए कमीशन को एग्जीक्यूटिव अथारिटी की परमीशन लेनी पड़ेगी और दूसरी ओर बहस की जा रही है कि मान लीजिए कि कोई फौजदारी मुकदमा अदालत मे दाखिल होता है तो मुकदमे के लिए सरकार की स्वीकृति की आवश्यकता न पड़े (घंटी) मान्यवर, मैं दो मिनट में अपनी बात समाप्त करूंगा, क्योंकि असैसर के सिलसिले में भी आज अमैंडमेंट हो रहा है तो—

Rule 6(a) says—I have already read this—that an assessor means a assessor appointed under these rules. And what is rule 6(a)? That is what is being amended today.

"That Central Government or, with the previous approval of the Central Government, the Commission may, from time to time, appoint one or more assessors to assist and advise the Commission in a matter connected with this inquiry."

मेरा नम्र निवेदन है कि एक मामले से असैसर की नियुक्ति करने के लिए कमीशन्स आफ इन्क्वायरी एक्ट के सदस्यों को जो सुप्रीम कोर्ट का सिटिंग जज भी हो सकता है, सुप्रीम कोर्ट का रिटायर्ड जज भी हो सकता है, किसी भी हाई कोर्ट का चीफ जस्टिस भी हो सकता है। एक मामूली असैसर की नियुक्ति के लिए भी कमीशन के सदस्य को सेंट्रल गवर्नमेंट के पास जाना पड़ेगा, ऐक्जीक्यूटिव अथारिटी के पास जाना पड़ेगा। वह ज्वाइंट सेक्रेटरी भी हो सकता है, सेक्रेटरी भी हो सकता है और सदस्य को रूल 6 के हिसाब से ऐक्जीक्यूटिव अथारिटी के पास जाना पड़ेगा। इसलिए मेरा निवेदन है कि इसमें जो प्राविजो बढ़ाया जा रहा है, यह अलोकतांत्रिक है, प्रेस के अधिकारों पर कुठाराघात है, आम आदमी के बोलने और लिखने की आजादी पर हमला है। हम फ्री सोसाइटी में रहते हैं। मैं आपको उदाहरण देता हूं। एक व्यक्ति

जो चुनाव लड़ता है वह भारत का राष्ट्रपति हो जाता है और भारतवर्ष के राष्ट्रपति हो जाने के बाद भी अगर उसके खिलाफ सुप्रीम कोर्ट में कोई रिट दाखिल कर दे तो उस राष्ट्रपति को बतौर गवाह के सुप्रीम कोर्ट के जज के पास जाना पड़ता है । एक केस हो चुका है इस देश में । शायद मुझे स्मरण है, वह वी. वी. गिरि का है । जब वी० वी० गिरि राष्ट्रपति हुए थे तो उनके विरुद्ध चुनाव याचिका प्रस्तुत की गई थी और वे बतौर गवाह के सुप्रीम कोर्ट में गए । अब चाहे सुप्रीम कोर्ट का सिटिंग जज हो या रिटायर्ड जज हो, कोई मुकदमा होता है तो उसको छूट दी जाती है ।

इसलिए मेरा निवेदन है कि यह संशोधन वापस लिया जाए क्योंकि इसके पीछे मंशा ठीक नहीं हैं । दुर्भावना से यह लाया गया है और इसके मैंने उदाहरण भी आपके सामने प्रस्तुत कर दिए हैं कि सरकार हुक्म करेगी सेक्शन 12 में कि--

—Hold the inquiry in a private room and the Commission will be bound by the directive of the Executive. The Commission is not in a position to appoint a single assessor without the prior approval of the Central Government. And, Sir, I *oppose this Bill tooth and nail.*

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Mr. Chidambaram.

SHRI P. CHIDAMBARAM: Mr. Vice-Chairman, Sir, I am grateful to the hon. Members who have participated in this debate and made valuable observations on the Bill.

The Bill contains three clauses. I believe, notwithstanding what the hon. Member Mr. Malaviya just said, clause 2 and clause 4 are non-controversial. They have been made pursuant to the recommendations of the Committee on Subordinate Legislation. We felt that section 12 as it stands now in the Act was enough. But the Committee on Subordinate Legislation, in its wisdom, felt that we should make a special provision. We are, therefore, making a special provision. There are rules which enable the appointment of Assessors and payment of travelling and other allowances. By clause 2 and clause 4 we are making substantive provisions in the Act so that the Rules are beyond challenge.

So far as clause 3 is concerned, I am grateful to Mr. Jethmalani—unfortunately, I do not find him here—for supporting the Bill. Equally unfortunate is that some hon. Members have opposed clause 3, perhaps due to a misunderstanding of the provisions. Sir, what are we doing in clause 3? We are not amending sub-section (1) of section 10A. But we are amending sub-section (2) and replacing it by a set of sub-sections under which the *procedure has been changed.* In order to clarify what we are doing by clause 3, I think I should trace the history of section 10A.

In the year 1962, ten years after the Act had been in operation, a number of qusetions were posed to Mr. Setlavad, the then Attorney General of India. Among the questions posed were whether a provision should be made to punish those who bring the members of a commission into disrepute. Shri Setalvad answered that such a provision was desirable and should be made. He was also asked what is the procedure that should be followed for trying the offences. In the opinion of Shri Setalvad the offence created by amending the Act should be tried by the High Court having regard to the high office and the status of those who occupy commissions of inquiry. The Law Commission which examined the Commissions of Inquiry Act submitted its 24th report and among the questions which the Law Commission examined were these two questions. On the question of creating an offence, the Law Commission said:

5.00 P.M.

"Virulent attacks have been made on the Commission and their members, a fact to which our attention has been drawn by several distinguished persons who have served the various commissions of inquiry appointed under the Act. We think that if the Act itself creates a specific offence of the kind suggested, attention of the public will

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be focussed on the penal consequence of a defamatory attack on the commission or its members. We consider it unnecessary to encumber the proposed provision with the various exceptions and explanations contained in Section 499 of the Indian Penal Code because we think that the clause without exceptions will be interpreted by the courts in a reasonable manner."

However, Sir I may add that on the question of procedure, the Law Commission felt that the provisions of the Criminal Procedure Code were adequate and that the then Section 198 should be applied to try the offence which is created by this amendment. Sir, the Government accepted the views of Shri Setalvad partly and the views of the Law Commission almost entirely and introduced Section 10A. This was in the year 1971. Unfortunately, what the hon. Member, Shri Balaram, overlooked was that the offence about which he is complaining is not being created by this Bill. The offence under Section 10A was created in 1971. Seventeen years after the offence has been created, he accuses me of creating an offence. The offence is there in the Statute Book since 1971. I am told that in 1971 you were our friend. I hope you will be our friend in future also. (*Interruptions*) I will answer your question at the end. Now, the question is: why are we changing the procedure for trying the offence ? That is the only question.

SHRI N. E. BALARAM: I put it blandly. "Extraordinary, oversimplified procedure" these are the words I used. You deny it or negate it or explain it.

SHRI P. CHIDAMBARAM: I will neither deny it nor negate it. I will answer and convince you.

SHRI N. E. BALARAM: I am ready to be convinced. The point is that you properly understand it. I am ready to be convinced.

SHRI P. CHIDAMBARAM: Sir, why are we changing the procedure? The present procedure is under Section 199 of the Criminal Procedure Code. Under the present procedure Section 199 Sub-section (2), anyone of the dignitaries mentioned in that sub-section has to file a complaint through a Public Prosecutor and before doing that he should obtain the sanction of either the Central Government or the State Government, as the case may be. Sir, every authority mentioned by name in Section 199, Sub-section (2) holds an executive office. It is the President, Vice-President, Governor, Administrator of a Union Territory, Minister of the Union Government or Minister of a State or any other public servant employed in connection with the affairs of the Union. So long as he holds an executive office, if he is brought into disrepute, he approaches the Executive Government and says, I have been brought into disrepute, the Executive Government may grant me sanction to file a complaint through the Public Prosecutor. Sir, Mr. Jethmalani hit the nail on the head when he said that there have not been too many cases of judicial authorities or Judges or persons exercising judicial function or persons holding proceedings which are of a judicial nature being brought into disrepute and they having to go to the Executive and seek sanction. That problem was highlighted in the Thakkar-Natarajan Inquiry. And what did the Judges say? Sir, before I quote the Judges, I must meet an argument that a Commission of Inquiry is not a court. There is no quarrel. A Commission of Inquiry indeed is not a court. But that does not derogate from the proposition that invariably persons who occupy office in a Commission of Inquiry are sitting Judges of the Supreme Court or the High Court or senior District Judges. The Act does not bar an architect or an engineer being appointed as a Commission of Inquiry. But invariably, going by experience, going by practical wisdom, a Commission of Inquiry is always constituted by a person who is a Judge of the Supreme Court or a Judge of the High Court or a senior District Judge. He may be a sitting Judge, he may be a retired Judge, he holds a high office or he has held a high office and he enjoys a high status.

Sir, when the Thakkar-Natarajan Inquiry was on and certain unfortunate attacks were made on the Thakkar-Natarajan Inquiry, this is what the two learned

Judges of the Supreme Court had to say, and I wish to read, Sir, from page 80 of the Report:

"The Commission wishes to bring into focus that while any person bringing the Commission or any member thereof into disrepute is liable to be prosecuted under Section 10-A of the Act the prosecution can be instituted only with the previous sanction of the Government, that is to say, the Executive. Ordinarily, the Executive would not withhold a sanction in the case of character assassination which would directly attract the provision embodied in the said section. However, it would be extremely embarrassing to place a sitting Judge in a situation where he is required to approach the Executive in a matter like this. In a given case the sanction granted may be challenged as defective. Besides, the prosecution would have to be in a subordinate court and would be subjected to further proceedings by way of appeal, revision, or writ petition in the hierarchy of courts. And this would be a long drawn affair resulting in publicity given to the proceedings which may result in greater embarrassment.

The Commission is impelled to place into focus these aspects so that when an occasion arises in future the incumbents of judicial office who are called upon to discharge such functions are not placed in an embarrassing situation. They may well refuse to undertake the assign for the aforesaid valid reasons unless the relevant statutes are suitably modified and the officials concerned are assured of full protection from all quarters."

Sir, if you kindly look at the Commissions of Inquiry Act, Section 4—Clause (a) and Clause (e)—provides that the Commission shall have powers of a civil court to summon and enforce the attendance of any person, to examine on oath, to issue commissions to the examination of witnesses. Section 4, sub-section 4 says, the Commission shall be deemed to be a civil court if an offence under Sections 175, 178, 179, 180 or 228 of the Indian Penal Code is committed. Section 4, subsection 5 says: Any proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code. So, while the commission is not a court, it would be an unreal distinction, it would be an unreal argument, to say that the commission is not discharging functions which are of a judicial nature, which are of a judicial character. Now, when we got this report of the Thakkar-Natarajan Commission, we did not act in haste. We referred the matter to the Attorney-General of India. We gave him the opinion of Mr. Setalvad given in 1962. We gave him also the Law Commission's Twenty-fourth Report, and said, please advise us whether we should amend section 10A to provide for a different procedure. Sir, the Attorney-General has given his opinion. I am not quoting from the opinion, but I am summarising. The Attorney-General has said that he is inclined to agree with Mr. Setalvad that the case should be tried in the High Court and not in a subordinate court and he has given good reasons for that. If, after all, commissions of inquiry are constituted by members of the higher judiciary, it would be quite embarrassing to a judge of the subordinate judiciary to try a complaint, when the complainant is a member of the higher judiciary. So, both Mr. Setalvad and the present Attorney-General are agreed that the trial should be in the High Court.

The next question is, should the complaint be filed by a prosecutor with the sanction of the executive government, or should it be filed straightaway on a complaint by the commission? Sir, I think there is great force in what Justice Thakkar and Justice Natarajan observed and I will tell you why. In our scheme of the Constitution, there are three departments of the State, one is the executive, the other is the judiciary and the third is the Parliament. While there is not a strict separation of powers under the Indian Constitution, as far as possible, these three institutions or departments of the State are autonomous in their respective spheres. I think there is a valid point made by Justice Thakkar and Justice

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Natarajan that if a member of the judiciary is brought into disrepute that member should not be placed in a position where he has to approach the executive government for sanctioning his prosecution. The distinction between President, Vice-President, Prime Minister, Union Minister and State Minister, on the one hand, and a judge on the other, is rather obvious. In the first category all of them hold executive offices and the sanction is to be given by the executive government, or the government to which they belong. In the latter case, he does not belong to the executive branch of the government. He belongs to the judicial branch of the government. And I think it would be granting to and assuring greater independence of the judiciary, greater independence of the commissioner, greater independence of the commission of inquiry, if that commission does not have to run to the executive and say, please sanction my complaint. What we are really doing is assuring to the commission and the commissioner and the judge who is invariably the commissioner, greater independence. He does not have to go to the Central Government or the State Government and say, please sanction my prosecution. This is the point made by Justice Thakkar and Justice Natarajan, a point with which the present Attorney-General has agreed entirely and said that this is a valid point and therefore the procedure should be changed. We have, therefore, changed the procedure. We have provided for trial in the High Court by a complaint to be given by the commission. We have fixed a period. We have said that the complaint shall be made within six months of the offence being committed and we have added the most important safeguard, namely, an appeal as a matter of right both on facts and on law to the Supreme Court of India. Now, Sir, please let the House decide, is this restricting the commission, or granting it greater independence? Is this in the direction of the executive assuming more power or the executive divesting itself of its power? Is it a step in the right direction or is it a step in the wrong direction? This gives the commissioner, the judge, who is invariably the commissioner, greater authority, greater independence. He is not at the mercy of the executive. If he feels that he has been brought into disrepute he will have to file complaint before another judge of the High Court. He will be tried by the higher judiciary There is an appeal as a matter of right on facts and on law to the Supreme Court of India. I think this is a most welcome provision and I am sure that those who objected to this provision will withdraw their objections and support this amending Bill. One last point made by Mr. Jethmalani. I have great regard for him as a criminal lawyer. I have never practised on the criminal side and I cannot really match him in his knowledge of criminal law. I wish he was here because he raised the question. He is not here to listen to my answer.

He said : Why have you added the proviso to section 10(A) (5)? For a moment, I thought I had made a mistake, because I am sure he would have studied the Bill carefully before he made his submission. But unfortunately this time, I think as the proverb goes: Even Homes nods. Mr. Jethmalani I think has made a mistake. Proviso to 10(a) (5) is nothing but a combination of section 200(a) of the Criminal Procedure Code and section 284(1) of the Criminal Procedure Code. As a complainant or as a witness, the Commissioner cannot we required to appear before the trial court. But he is free to appear. He cannot be compelled to appear. Why? Because in section 200 (a) of the Criminal Procedure Code, as it stands today, a complainant need not be asked to attend the trial court to prove his complaint, if he is a public servant. Under 284(1), high dignitaries are always exempt from personal attendance. But that does not mean that the court cannot issue a commission to examine him as a witness. Here also, sections 200(a) and 284(1) have been combined and put as a proviso to 10(A) (5).

If Mr. Jethmalani was here, I am sure he would have agreed with me. But if he had authorised Mr. Kamal Morarka; he is also not here; his vocal supporter is also not here.

So, I would appeal to the hon. Members to withdraw the obections and pass this Bill unanimously.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The question is:

"That the Bill further to amend the Commissions of Inquiry Act, 1952, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): We shall now take up clause-by-clause consideration of the Bill.

Clause 2—(Insertion of new section 5B)

SHRI SATYA PRAKASH MALAVIYA: Sir, I move:

"That at page 1, *after* line 12, the following be *inserted*, namely:—

"5C. The qualifications of persons to be appointed as asessors shall be such as may be prescribed.' "

The question was put and the motion was negatived.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 and 4 were added to the Bill.

Clause 1, the Enacting Formula, and the Title were added to the Bill.

SHRI P. CHIDAMBARAM: I move:

"That the Bill be passed."

The question was put and the motion was adopted.

ALLOCATION OF TIME FOR DISPOSAL OF GOVERNMENT LEGISLATIVE BUSINESS

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): I have to inform Members that the Business Advisory Committee at its meetings held today, the 1st December, 1988, allotted time for Government Legislative Business as follows:—

Business	*Time Allotted*
1. Consideration and passing of the National Highways Authority of India Bill, 1988, as passed by Lok Sabha.	2 hrs.
2. Consideration and return of the Appropriation (No. 5) Bill, 1988, as passed by Lok Sabha.	2 hrs.

The Committee also recommended that the House may sit during lunch hour and also sit upto 7.00 p.m. daily and beyond 7.00 p.m. as and when necessary, from Monday, the 5th December, 1988, for the transaction of Government Legislative and other Business.

DISCUSSION ON THE THIRTY-FIFTH, THIRTY-SIXTH AND THIRTY-SEVENTH REPORTS OF THE UNION PUBLIC SERVICE COMMISSION

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): I beg to move:

"That the thirty-fifth, the thirty-sixth and the thirty-seventh Reports of the Union Public Service Commission for the periods from 1st April, 1984 to 31st March, 1985, from 1st April, 1985 to 31st March, 1986 and from 1st April 1986 to 31st March, 1987, laid on the Table of the Rajya Sabha on the 27th February, 1986, 28th August, 1987 and 5th September, 1988, respectively, be taken into consideration."

The UPSC is required under article 323(1) of the Constitution to present annually to the President a report on the work done by the Commission. These Reports are placed by the Government on the Table along with Memoranda explaining the reasons in respect of cases where the advice of the Commission was not accepted by the Government. It is customary to take up for discussion the report of the Commission in the Houses to elicit the esteemed views of the hon. Members on the overall policies on recruitment and management of public services.